

HOUSE BILL NO. 714

INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A SUBDIVIDER TO DONATE LAND TO A HOMEOWNER ASSOCIATION INSTEAD OF A GOVERNING BODY TO FULFILL PARK DEDICATION REQUIREMENTS FOR A SUBDIVISION; AUTHORIZING CASH DONATIONS TO BE PAID IN INSTALLMENTS IN LIEU OF LAND DONATIONS; ALLOWING ALL CASH DONATIONS TO BE USED FOR PARK MAINTENANCE; AND AMENDING SECTIONS 7-16-2324, 70-19-426, AND 76-3-621, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of chapter 8, part 25, and this section, lands dedicated to the public use for park or playground purposes under 76-3-621 ~~or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county~~ are considered county lands unless conveyance to an association, as defined in 70-19-426, is provided by law or agreement.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25, and this section.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and

(f) comply with any other applicable requirements under chapter 8, part 25.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication."

Section 2. Section 70-19-426, MCA, is amended to read:

"70-19-426. Residential construction disputes -- definitions. As used in 7-16-2324, 70-19-427, 70-19-428, 76-3-621, and this section, the following definitions apply:

(1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a residence.

(b) The term does not include a civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a unit owners' organization or a nonprofit corporation created to own and operate portions of a planned community that has the power to require unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction or remodeling of a residence.

(4) "Construction defect" means a deficiency in or arising out of the supervision, construction, or remodeling of a residence that results from any of the following:

(a) defective materials, products, or components used in the construction or remodeling of a residence;

(b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the construction or remodeling of a residence;

(c) failure to construct or remodel a residence in accordance with contract specifications or accepted trade standards.

(5) "Construction professional" means a builder, builder vendor, contractor, or subcontractor performing or furnishing the supervision of the construction or remodeling of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(6) (a) "Homeowner" means:

(i) any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the remodeling, construction, or construction and sale of a residence; or

(ii) an association as defined in this section.

(b) The term homeowner includes but is not limited to a subsequent purchaser of a residence from any homeowner.

(7) "Residence" means a single-family house or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last-known address of the addressee."

Section 3. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), (6), and (7) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) (a) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both.

(b) When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(c) A developer may pay a cash-only donation over 5 years in annual installments to be at least equal in proportion to the percentage of lots sold. The entire donation must be paid within 5 years of the date of preliminary plat approval.

(5) (a) In accordance with the provisions of ~~subsections~~ subsection (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

~~(c) The governing body may not use more than 50% of the dedicated money for park maintenance.~~

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; of cultural, historical,

1 or natural resources; of agricultural interests; or of aesthetic values; and

2 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided
3 for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required
4 under subsection (1);

5 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
6 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required
7 under subsection (1); or

8 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational
9 uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

10 (ii) the area of the land and any improvements set aside for park and recreational uses equals or
11 exceeds the area of dedication required under subsection (1).

12 (7) The local governing body may waive the park dedication requirement if:

13 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical
14 wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

15 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
16 or exceeds the area of the dedication required under subsection (1).

17 (8) A subdivider may dedicate a land donation equal to the areas provided for in subsection (1) to an
18 association, as defined in 70-19-426, to be used as park land.

19 ~~(8)~~(9) For the purposes of this section:

20 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

21 (b) "dwelling unit" means a residential structure in which a person or persons reside.

22 ~~(9)~~(10) A land donation under this section may be inside or outside of the subdivision."

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